

Ministry of Culture and National Heritage
of the Republic of Poland
Director of Legal Department
Jarosław Czuba

Warsaw, 24th February 2009

DP. 260/09
DP. WPMiA1024/134/08/Vbz

Mr.

Worth S. Anderson

Trade Officer

Economic Section

American Embassy Warsaw

Al. Ujazdowskie 29/31

00 – 540 Warszawa

Dear Mr. Anderson.

I beg to herewith convey to you the position of the Polish Ministry of Culture and National Heritage regarding Poland's presence on and possible removal from the Watch List of Special 301 Report, with courteous request about send it to Office of the United States Trade Representative in Washington D.C.

Yours sincerely.

DYREKTOR
Departamentu Prawnego

Jarosław Czuba



MINISTER OF CULTURE AND
NATIONAL HERITAGE

Bogdan Zdrojewski

Warsaw, on 24 February, 2009

DP. 260/09

DP. WPH: A 1024/134/04/K62

To:

Jennifer

Choe Groves

***Director for Intellectual Property
and Innovation***

and Chair of the 301 Committee

***Office of the United States Trade
Representative***

600 17th Street, N.W.

Washington, DC 20508

United States of America

Dear Madam,

Regarding the annual '301 Special Report' prepared by the US Trade Representative, I would like to present the position of the Ministry of Culture and National Heritage concerning the presence and possible deletion of Poland from so called Watch List of the 301 Report.

Despite our permanent efforts, delivered long-term targets (increasing effectiveness, efficiency and permanent coordination of the activities taken by the state services in combating piracy or borders protection), continuous efforts on increasing effectiveness

and efficacy of penal procedures, measurable effects in combating hacking, intensive educational programmes increasing social awareness, in 2009 Poland has been still recommended by the Intellectual Property Alliance to be included into the list of the observed countries – Watch List. It is to be emphasized that our country has been not included into the Priority Watch List (i.e. the list of countries, in which the piracy coefficient remains high) since 1 May, 2004.

The Police forces, Border Guard and Custom Service have been taking, within their duties, wide-scale activities aiming at both prevention and combating crime against intellectual property rights. In addition, information of the Team for Counteracting the Infringement of Copyright and Related Rights acting under the auspices of the Ministry of Culture and National Heritage¹ provides that the effectiveness of the activities of the authorized services responsible for combating piracy and forgery should be highly evaluated. The same may relate to cooperation of the said services.

Improvement of effectiveness in detecting crime against intellectual property is a result of the activities related to tightening of the state borders executed by the border services.

The year 2008 brought a great intensification in the activities of the Border Guard in combating crime against widely understood intellectual property. The activities taken covered the all-Poland actions and concerned mostly detentions of persons and goods, identification

¹ The team is composed of the following:

- 1) the Chairman – the Minister of Culture and National Heritage,
- 2) the Vice Chairman – secretary or undersecretary of state appointed by the Minister of Interior and Administration,
- 3) members on the position of secretary or undersecretary of state nominated by:
 - a) the Minister of Finance,
 - b) the Minister of Justice,
 - c) the Head of the Chancellery of the President of the Council of Ministers,
 - d) the Chairman of the Committee for European Integration,
 - e) the Minister of National Education,
 - f) the Minister of Science and Higher Education,
- 4) members nominated by:
 - a) the Commander-in-Chief of the Border Guards,
 - b) the Commander-in-Chief of the Police.

of production sites and smuggling of goods subject to the provisions on copyrights protection and related rights.

The effectiveness of the Border Guard of the Republic of Poland may be proved by one of the largest in EU detention of pirate goods.²

In the Police opinion, decrease in number of cases and secured carriers, resulting in lower threat from the side of people selling pirate products on fairs and markets, is being noticeable.

Technological development as well as development of new crime mechanisms present in Internet resulted in almost double increase in a number of proceeded cases. Such cases, due to its complexity, require greater amount of time to be solved. However it should be emphasized that within the actions taken in 2008 the servers with hard disks of several TB capacity were secured, **which proves that more illegally distributed files were secured in 2008 comparing to the previous year.**

In the result of police actions, sale of pirate CDs on markets and fairs located in agglomerations has been significantly decreased.

In addition the activities on the area of large fairs, markets and IT exchanges aiming at reduction of trade in pirate products have been taken. Most of them has been in cooperation with the Border Guard and Custom Service of the Ministry of Finance.

The Police, in particular in the eastern cross-border areas, has been maintaining on-going cooperation with the Border Guard and Custom Service of the Ministry of Finance. Numerous activities taken jointly in the cross-border fairs and markets has been focusing on reduction of intellectual property rights infringements. Cooperation of the prosecution agencies requires complex coordination of tasks executed in this scope. In addition, thanks to such cooperation, it is often possible to deliver one of the key targets of preliminary proceedings i.e. identification of source of origin of the pirate products.

² In the second half of January, 2009 the Border Guard of the Republic of Poland broke an international organized crime group engaged in smuggling, copying and distribution of optical carriers containing music and films. According to preliminary pricing of the expert from the Polish Society of the Phonographic Industry (ZPAV), the value of the secured goods amounted to more than PLN 30 million. In the course of the action also the entire laboratory for copying purposes was secured, in which an equipment for illegal CDs copying was found: PCs, recorders, printers and memory sticks. The group has been operating in the entire country and was very well organized. It has had perfectly organized logistic background, private vehicles, trucks and buses. The preliminary export reports say that the secured carriers were produced mostly in Russia. The activities of the group started outside the eastern border of Poland and ended in many EU Member States. Transports of ready CDs were intended for intra-community market. The experts from the Polish Society of the Phonographic Industry (ZPAV) as well the Foundation for the Protection of Audiovisual Works (FOTA) assess the results of the Border Guards activities as one of the greatest successes in this area within the last 3 years in the Member States of the European Union.

Agreement between the Minister of Culture and National Heritage and Police Chief Commanding Officer in the area of mechanoscopic identification of optical carriers executed by the Central Criminal Laboratory has been already finally consulted. After signing the agreement it will be possible to provide the comparative materials for experts opinion.

In 2009 the Custom Service has continued its tasks on combating the intellectual property rights infringements, analysis of secured pirate products and forged products in order to identify the trends and new risk areas for custom control purposes.

The Project Team for Intellectual Property Protection Law of the European Commission, composed of custom experts from 9 Member States (including Poland) focused on analysis of practical aspects of applying law to practical issues of concern.

The main target of the Team for 2008 was to support the Custom Code Committee of the EU in delivery of its tasks.

Also further intensification in the activities of the Custom Service in the scope of combating the patent rights infringement (pharmaceutical products, plant protection products) has taken place. In 2008 the representative of the Custom Service launched it works within the Governmental Team for Drugs, established by the Ministry of Health and aiming at development of effective methods of counteracting trade in forged pharmaceutical products.

The Polish Custom Service has been actively participating in all activities aiming at reduction of smuggling the products infringing the intellectual property rights.

Development of the effective methods of counteracting this phenomenon takes place, among others, within the works of the governmental working teams established in 2008, i.e. Governmental Team for Drugs, established by the Ministry of Health and the Rights Protection Committee at the Ministry of Sports and Tourism. It is to be stated that cooperation within these teams has a great impact on increase in effectiveness, efficiency and permanent coordination of the activities between the Custom Service and state administration departments responsible for intellectual property rights protection.

In addition one should emphasize further strengthening of on-going cooperation with the prosecution agencies and Border Guard authorities at local level, for the most within jointly taken operational actions focused on reduction in trade in pirate and forged products.

Pursuant to the assumptions of the '*Strategy for protection of copyright and related rights for years 2006 – 2007*', the EU standards in the area of legal provisions met by Polish custom administration had to be proved by development and implementation of their effective

execution system. VINCI informational system was developed to support control activities taken by the custom officers in the scope of protection of the Community area against inflow of pirate and forged products.

At the same time, meeting the needs of the economic environment, the VINCI system introduces a series of facilitations for the intellectual property rights owners. This is the system covering all custom administration units in the country, enabling fast information exchange on any infringements of intellectual property rights detected by the custom services. The VINCI is also a database on intellectual property rights entities, protected by the custom authorities. Thanks to the VINCI it is possible to, among other, collect and process information transferred by the producers on original and pirate products, which are indispensable to execute an effective custom control. VINCI is equipped in unique in the European scale solution enabling placing photos and video films in it, which plays a supportive role in identification of infringements of the intellectual property rights. The system enables entering and processing information on all detentions of pirate and forged products and preparation of various statistical studies, including these for the European Union.

The system at the current developmental stage is available in Intranet for the authorized users only – for the Custom Service Officers, having a relevant login and password.

It is to be emphasized that the VINCI system is the first system in the European Union handling the intellectual property rights issues in complex manner and containing innovative IT solutions.

Within the Transition Facility 2004 Project ‘Strengthening of intellectual and industrial property rights protection’ the **System of Granting Access to Data of the Patent Office of the Republic of Poland and of the Ministry of Culture and National Heritage for the Police, Border Guard, Custom Service and Public Prosecutor’s Office.** The system covering infrastructure with the installed programme was tested and accepted from the manufacturer. Its components were provided to the beneficiaries.

Also the process of permanent education of the Police, Border Guard, Custom Service and Public Prosecutor’s Office staff as well as numerous campaigns, events, competitions related to increase of legal awareness of the society should be emphasized.

Analysis of opportunities and relevance of introducing the amendments to the provisions on control of optical carriers manufacturing has been still considered. However lack of penal sanctions for failure to meet one’s reporting obligations may not pose a legal

argument itself. Such solution infringes the freedom of conducting business activity and requires considering of effective instruments to execute this obligation. To summarize, in the opinion of the Ministry of Culture and National Heritage – coordinator of the Team for Counteracting Violations of Copyrights and Related Rights, the abovementioned initiatives predispose Poland to be removed from the Watch List.

Most of the countries faces problems with widely understood piracy and forgery (faulty legal solutions, goods smuggling, insufficient technical background, etc.). Comparing to the previous years, Poland has made significant Progress both in legislative area and in the scope of activities effectiveness or increase in social awareness, and, despite presence of other related matters, such as **refund of advanced pharmaceutical and biotechnological technologies, these are covered by separate discussion of political and commercial nature rather than concerning intellectual property rights protection.**

The raised issue of camcording may constitute a voice to this discussion. However one should notice that this crime – in relation to film produced in the United States – was committed in the United States, not in Poland, where the premieres of the films are often delayed.

We wish our previous activities and efforts to be duly considered and evaluated and that the mercantile aspects, not directly related to piracy and forgery, constituted no barrier to the efforts of Poland in gaining a status of high-confidence country in the area of due observance of the intellectual property rights.

Raising of the issue of the possible removal of Poland from the Watch List by the US Trade Representative Office due to the abovementioned initiatives remains to be considered.

Detailed information on the latest version of the Polish Report for 2008 will be provided to the representatives of the US Embassy in Warsaw as soon as possible.

Z upr. MINISTRA KULTURY
I DZIEDZICTWA NARODOWEGO
SEKRETARZ STANU
Piotr Żuchowski

Yours sincerely